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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/675,673

09/30/2003

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AUS920030796US1

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10/25/2006

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EXAMINER

WONG, NOBLE S

ART UNIT

PAPER NUMBER

2173

DATE MAILED: 10/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/675,673	Applicant(s) KIRKLAND, DUSTIN C.	
	Examiner Noble S. Wong	Art Unit 2173	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 September 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7,9-11,13,15-17,19 and 22-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-11,13,15-17,19 and 22-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____   | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This action is in response to the amended claims filed on 9/20/06.

#### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-7,9-11,13,15-17,19 and 22-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1, 5, 10, and 16 are rejected as the original disclosure fails to provide support for the subject matter as now claimed. Specifically, support for the exclusionary statement "without user intervention" which was added into the claims by amendment is not found in the original disclosure of the instant application. Any negative limitation or exclusionary proviso must have basis in the original disclosure. See MPEP 2173.05(i). As such, the limitation(s), supra, must be deleted from the claims in response to this action

Claims 1, 5, 9, 10, 16, and 23 are rejected as the original disclosure fails to provide support for the subject matter as now claimed. Specifically, the term "actual picture image" is not supported by the specification, since the specification does not specify that the "picture" is an actual picture.

As to dependent claims 2-4, 11, 13, 15, 17, 19, and 22, they do not correct the limitations set forth above.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 16, 17, 19, and 22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 16, 17, 19, and 22 recite the limitation “computer readable medium”, but do not explicitly define computer readable media as transmission or carrier signals. However, one of ordinary skill in the art can interpret the media as claimed in its broadest reasonable sense as covering transmissions as referred in the specification on p. 22 lines 1-7.

As such, electromagnetic signals are not considered to be statutory subject matter since it is not either process, machine, manufacture, or composition of matter {see the “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility” Annex IV(c)}.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4, 9-11, 13, 15-17, 19, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crawford (US Patent # 6,781,608) in view of Clark et al. (US Patent Application Publication # US 2002/0174188 A1) and in view of Miller et al. (US Patent Application Publication # US 2005/0004993 A1).

As to independent claim 1, Crawford teaches a method in a data processing system for handling instant messages (see col. 1 lines 47-54), the method comprising:

- responsive to receiving an instant message (step 745),
  - for determining whether an actual picture image (i.e. buddy icon 1110 see col. 13 lines 14-20 and col. 17 line 35-38) of a sender (client 702a) of the instant message is associated with the instant message (step 735),
  - wherein the actual picture image of the sender is located in at least one of a local cache (i.e. see col. 13 line 52 – col. 14 line 5; also a user can select a picture from the buddy icon browser or a personal icon, i.e. a face shot taken in JPEG format, and use it as his buddy icon, see Browse PC button in Fig. 8; also note applicant states that a picture can act as a cache, “These image files act as a cache for the pictures,” see p. 13 lines 3-4 specification) on the data processing system and a preexisting database of pictures on a remote data processing system,
- displaying the actual picture image of the sender with the instant message on a display (display 295) in the data processing system if the actual picture image of the sender is associated with the instant message (i.e. col. 17 lines 31-38 and Fig. 11),

but does not teach

- where the actual picture image is located as determined by a user selected preference, and
- wherein the determining step (or the determining means is an instant messaging process of a receiver of the instant message) is automatically performed by an instant messaging process of a receiver of the instant message that determines whether the actual picture image of the sender is in the local cache or the pre-existing database of pictures without user intervention

Clark et al. teaches where the actual picture image is located as determined by a user selected preference (option to store the profile locally 104, Fig. 2B).

Therefore, it would have been obvious to one of ordinary skill in the art, having the teaching of Crawford and Clark et al. before him at the time the invention was made, to modify the image displaying in an instant message as taught by Crawford to include the image location preference of Clark et al. with the motivation being “to store contact information on computers attached to the Internet and share contact information with other computers, phones, PDAs or devices connected to the Internet without having to be in proximity to the other person,” (see [0003], ‘Clark).

Miller et al. teaches wherein the determining step (or the determining means is an instant messaging process of a receiver of the instant message) is automatically performed by an instant messaging process (retrieve object operation 400) of a receiver (client 102) of the instant message that determines whether the actual picture image of the sender is in the local cache or the pre-existing database of pictures without user intervention (query 404).

Therefore, it would have been obvious to one of ordinary skill in the art, having the teaching of Crawford and Miller et al. before him at the time the invention was made, to modify the image displaying in an instant message as taught by Crawford to include the determining from both local and remote sources as taught by Miller et al. with the motivation being to “provide more features that make the instant messaging conversation a richer experience. Such features operate on various types of data objects, in addition to text. For example, a custom user tile feature allows a user to generate and transmit a custom user tile that uniquely represents the user on another user's computer. Transmission of such feature objects typically requires a higher bandwidth, than text, to appear error-free to the recipient. In addition, objects that represent a

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user during a conversation typically will change infrequently compared to how often such objects are accessed,” (see [0004], ‘Miller).

As to independent claim 9, Crawford teaches a data processing system for handling instant messages, the data processing system comprising:

- a bus system (i.e. within general-purpose computer 270 for the utility of its components, see Fig. 2);
- a communications unit connected to the bus system (communication device 284);
- a memory connected to the bus system (storage 272), wherein the memory includes a set of instructions (client application(s) 278); and
- a processing unit connected to the bus system (CPU 282), wherein the processing unit executes the set of instructions to
  - determine whether an actual picture image (i.e. buddy icon 1110 see col. 13 lines 14-20 and col. 17 line 35-38) of a sender of the instant message is associated with the instant message (step 735) in response to receiving an instant message (step 745),
  - and display the actual picture image of the sender with the instant message on a display (display 295) in the data processing system if the actual picture image of the sender is associated with the instant message (i.e. col. 17 lines 31-38 and Fig. 11),

but does not teach:

- wherein the actual picture image of the sender is located in a preexisting database of pictures,
- wherein the actual picture image of the sender is attached to the instant message by a separate server data processing system,
- while the instant message is in transit from the sender to the data processing system, as determined by an indicator in the instant message

Clark et al. teaches:

- wherein the actual picture image of the sender is located in a preexisting database of pictures (i.e. on a personal profile, see [0021], ‘Clark),
- wherein the actual picture image of the sender is attached to the instant message by a separate server data processing system (i.e. send/exchange module 200 with the profile stored on database 120, see Fig. 1C, ‘Clark),

Therefore, it would have been obvious to one of ordinary skill in the art, having the teaching of Crawford and Clark et al. before him at the time the invention was made, to modify the image displaying in an instant message as taught by Crawford to include the image location

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on a separate server as taught by Clark et al. with the motivation being to “to store contact information on computers attached to the Internet and share contact information with other computers, phones, PDAs or devices connected to the Internet without having to be in proximity to the other person,” (see [0003], ‘Clark).

Miller teaches:

- wherein the actual picture image of the sender is attached, while the instant message is in transit from the sender to the data processing system, as determined by an indicator in the instant message (i.e. query operation 404 determines whether the requested object is in a local cache by checking the hash value (indicator) of the image, which is sent with the instant message, against the local cache, if it is found, it goes to retrieving operation 406 or retrieving operation 408, see [0057]-[0059]).

Therefore, it would have been obvious to one of ordinary skill in the art, having the teaching of Crawford and Miller et al. before him at the time the invention was made, to modify the image displaying in an instant message as taught by Crawford to include the determining from both local and remote sources as taught by Miller et al. with the motivation being to “provide more features that make the instant messaging conversation a richer experience. Such features operate on various types of data objects, in addition to text. For example, a custom user tile feature allows a user to generate and transmit a custom user tile that uniquely represents the user on another user's computer. Transmission of such feature objects typically requires a higher bandwidth, than text, to appear error-free to the recipient. In addition, objects that represent a user during a conversation typically will change infrequently compared to how often such objects are accessed,” (see [0004], ‘Miller).

As to independent claims 10 and 16, claims 10 and 16 differ from claim 1 only in that claim 10 and 16 is an apparatus claim, with claim 10 being a data processing system for handling instant messages (communication system 200) and claim 16 being a computer program product



(client applications 278) in a computer readable medium (storage 272) for handling instant messages in a data processing system (communication system 200), where as claim 1 is a method claim. Thus, claims 10 and 16 are analyzed as previously discussed with respect to claim 1 above.

As to claims 2, 11, and 17, Crawford in view of Clark et al. and Miller et al. teaches, wherein the actual picture image of the sender and the instant message are displayed in a single window (see Fig. 11, 'Crawford).

As to claims 3, Crawford in view of Clark et al. and Miller et al. teaches the method of claim 1, wherein the user selected preference is local (user stores message locally 105, 'Clark), and wherein the actual picture image of the sender is not received with the instant message (retrieving operation 406, 'Miller) but instead was previously received with another message previously sent to the data processing system from the sender and stored in the local cache on the data processing system (store object operation flow 300, 'Miller).

As to claim 4, Crawford in view of Clark et al. and Miller et al. teaches the method of claim 1, wherein the actual picture image of the sender is stored in the preexisting database on the remote data processing system (i.e. on a personal profile, see [0021], 'Clark), and wherein the preexisting database is maintained separately from a generic icon database (i.e. a personal profile see [0021], 'Clark) and the preexisting database is used to provide pictures of users for a different user identification purpose other than instant messaging (i.e. used to exchange information like a business card, see [0006]-[0007], 'Clark).

As to claims 13 and 19, Crawford in view of Clark et al. and Miller et al. teaches wherein the actual picture image of the sender is stored in a local cache (object store 116, 'Miller) on the

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data processing system and is not received with the instant message from the sender (steps 402, 404, 406 and 412, see Fig. 4, 'Miller).

As to claim 15, Crawford in view of Clark et al. and Miller et al. teaches the data processing system of claim 10, wherein the preexisting database of pictures is maintained separately from a generic icon database (i.e. a personal profile see [0021], 'Clark) and is used to provide pictures of users for a different user identification purpose other than instant messaging (i.e. used to exchange information like a business card, see [0006]-[0007], 'Clark).

As to claim 22, Crawford in view of Clark et al. and Miller et al. teaches the computer program product of claim 16, wherein the actual picture image of the sender in the preexisting database also is used for a different user identification purpose other than instant messaging (i.e. used to exchange information like a business card, see [0006]-[0007], 'Clark).

7. Claims 5-7, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crawford (US Patent # 6,781,608) in view of Ostermann et al. (US Patent # 6,990,452).

As to independent claim 5, Crawford teaches a method in a data processing system for handling instant messages, the method comprising:

- responsive to receiving an instant message (step 745),
  - determining whether an actual picture image (i.e. buddy icon 1110 see col. 13 lines 14-20 and col. 17 line 35-38) of a sender (client 702a) of the instant message is associated with the instant message (step 735); and
  - displaying the actual picture image of the sender with the instant message on a display (display 295) in the data processing system if the actual picture image of the sender is associated with the instant message (i.e. col. 17 lines 31-38 and Fig. 11),
  - wherein the actual picture image of the sender is embedded by an instant messaging process of the sender into the instant message prior to sending the instant message to the data processing system (step 725),

but does not teach

- wherein the actual picture image of the sender is a selected picture that is selected from a plurality of different actual picture images of the sender, the selected picture being automatically selected by the instant messaging process without user intervention based upon particular content in the instant message.

Ostermann et al. teaches wherein the actual picture image of the sender is a selected picture that is selected from a plurality of different actual picture images of the sender (i.e. “the sender ... chooses an animated entity 94,” the animated entity being a combination of emotions show as a video. This video includes multiple images of the avatar during his emotion translation, see col. 8 lines 51-52), the selected picture being automatically selected (i.e. the chosen animated entity 94 would display different emotion images based on a particular emoticon, see col. 8 lines 51-52 and col. 9 lines 8-34, ‘Ostermann) by the instant messaging process without user intervention based upon particular content in the instant message (i.e. see col. 9 lines 16-34).

Therefore, it would have been obvious to one of ordinary skill in the art, having the teaching of Crawford and Ostermann et al. before him at the time the invention was made, to modify the image sending as taught by Crawford to include the choosing of a plurality of images based on particular content in the message of Ostermann et al. to “improve user experience with a computer system by personalizing the exchange of information.” (See col. 1 lines 41-42, ‘Ostermann)

As to independent claim 23, Crawford teaches a data processing system (communication system 200) for sending an instant message, the data processing system comprising:

- receiving means for receiving the instant message from a sender (client 702a) co-acting with the data processing system (step 745);
- selection means for selecting (i.e. choosing an actual picture image (i.e. buddy icon 1110 see col. 13 lines 14-20 and col. 17 line 35-38) of the sender that is to be sent with the instant message,

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- wherein the actual picture image of the sender is located in a preexisting database of pictures (i.e. choosing an icon from the “Buddy Icons Center” for use for a buddy, see Fig. 8); and
- sending means for sending the actual picture image of the sender with the instant message (step 725),

but does not teach:

- wherein the actual picture image of the sender is automatically selected by the selection means based upon particular content in the instant message; and

Ostermann et al. teaches

- wherein the actual picture image of the sender (i.e. “the sender ... chooses an animated entity 94,” the animated entity being a combination of emotions show as a video. This video includes multiple images of the avatar during his emotion translation, see col. 8 lines 51-52) is automatically selected (i.e. the chosen animated entity 94 would display different emotion images based on a particular emoticon, see col. 8 lines 51-52 and col. 9 lines 8-34, ‘Ostermann) by the selection means based upon particular content in the instant message (i.e. by emoticon, see col. 9 lines 16-34).

Therefore, it would have been obvious to one of ordinary skill in the art, having the teaching of Crawford and Ostermann et al. before him at the time the invention was made, to modify the image sending as taught by Crawford to include the choosing of a plurality of images based on particular content in the message of Ostermann et al. to “improve user experience with a computer system by personalizing the exchange of information.” (See col. 1 lines 41-42, ‘Ostermann)

As to claim 6, Crawford in view of Ostermann et al. teaches the method of claim 5, wherein the particular content is an emoticon (see col. 8 lines 35-50, ‘Ostermann).

As to claim 7, Crawford in view of Ostermann et al. teaches the method of claim 5 further comprising: receiving the actual picture image of the sender with the instant message (i.e. buddy icon 1110 see col. 13 lines 14-20 and col. 17 line 35-38, ‘Crawford and using the animated entity 94, ‘Ostermann).

As to claim 24, Crawford in view of Ostermann et al. teaches the data processing system of claim 23, wherein the particular content is an emoticon (see col. 8 lines 35-50, 'Ostermann).

### ***Response to Arguments***

8. Applicant's arguments filed 9/20/06 have been fully considered but they are not persuasive.

Applicant states that, "the amendment made to Claim 1 clearly differentiates Crawford's graphic file, which is saved on the sender-side, from the features of Claim 1 where the local cache is on the receiver-side, as it is a part of the receiver-side process performed by the data processing system that receives the instant message." The argument has been considered but is moot in view of the new ground(s) of rejection.

Applicant states that, "Claim 1 has been amended to clarify that it is an actual picture image of the sender themselves that is sent with the message, as described at Specification page 10, line 22 - page 11, line 8; page 12, lines 7-10), which advantageously provides for improving the personability of instant messages (Specification page 2, lines 18-23)."

The examiner notes that the specification does not describe the term "actual picture image of the sender" but only mentions that the image used to help personalize and differentiate the sender of an instant message. Crawford teaches an actual image picture on see col. 13 lines 14-20 and col. 17 line 35-38, as the buddy icon is designated as a graphical image. Therefore, the sender "can use [these images] to represent themselves or other buddies in their Buddy List," (see col. 13 line 17) or in other words help differentiate themselves from other senders. Also, the examiner notes the definitions of actual {2. existing in fact or reality}, picture {1: a design or

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representation made by various means (as painting, drawing, or photography)), and image {4: a tangible or visible representation} (see Merriam-Webster's Collegiate Dictionary, 1999). As to the term actual, the buddy icons that Crawford teaches are not imaginary images, but are existing files located in the communication system 200 that the sender can choose to represent themselves.

Applicant states that, "The generic buddy icons do not help a recipient of a message to recall the sender's identity, as do the features of Claim 1 (Specification page 11, lines 1-8), as they are generic and available for use by anyone using the IM system." In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "help a recipient of a message to recall the sender's identity") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). These features are not recited in the rejected claim(s).

Applicant states the following:

Further with respect to Claim 3, such claim has been amended to further emphasize advantages provided by the claimed features recited therein. In particular, once an image has initially been sent in an initial message, the image does not need to be resent by the sender each time a subsequent message is sent by the sender (Specification page 12, lines 18-20), thereby reducing required system resources while still maintaining picture presentation. Thus, it is urged that amended Claim 3 is not anticipated by the cited reference.

Further with respect to Claim 4, Applicants have amended such claim in accordance with the description at Specification page 13, lines 21-29. The teachings of the cited reference do not contemplate such dual-usage of pictures for user identity purposes. Therefore, it is further urged that amended Claim 4 is not anticipated by the cited reference.

With respect to Claim 5 (and dependent Claim 7), such claim has been amended in accordance with the Specification description at page 14, lines 13-30. These claimed features advantageously provide for automatically selecting a given picture from a plurality of different pictures associated with a sender of the message, to reflect a particular state of the user, such as their emotion. The cited reference does not contemplate any such capability. Thus, it is urged that amended Claim 5 is not anticipated by the cited reference.

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With respect to Claim 9, such claim has been amended in accordance with the Specification description at page 18, lines 16-21. These claimed features advantageously provide for using a centralized server database for maintaining images, such as element 408 of Figure 4, which may be particularly useful if a preexisting database of images, possibly being used for another purpose, is re-used in this particular environment (Specification page 13, lines 15-29). Thus, it is urged that amended Claim 9 is not anticipated by the cited reference."

The argument has been considered but is moot in view of the new ground(s) of rejection.

### *Inquiries*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noble S. Wong whose telephone number is (571) 270-1044. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca can be reached on (571) 272-4048. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Noble Wong  
10/19/06

*Kieu D. Vu*  
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Primary Examiner